

Adopted an ordinance amending the McAllen Code of Ordinances, Chapter 106. Utilities; providing for substantial modification of the City of McAllen Pretreatment and Sewer Use Program.

2. BIDS/CONTRACTS:

- A) Approving of Interlocal Agreement with McAllen Independent School District for Perez Elementary for construction of pavilion on property owned in part by the school district and in part by the City of McAllen.**

Staff recommended approval of an Interlocal Agreement with McAllen Independent School District for Perez Elementary for construction of pavilion on property owned in part by the school district and in part by the City of McAllen and approval of \$50,000 for the construction of the pavilion.

Commissioner Ingram moved to approve the interlocal agreement as recommended. Mayor Pro Tem Ramirez seconded the motion. The motion carried unanimously.

- B) Authorization of contract with Insight Networking and AT&T Datacomm for information technology infrastructure at New Main Library in order to meet Universal Service Administrative Company Grant Guidelines and compete for E-Rate award.**

Staff recommended authorization to enter into a contract with Insight Networking and AT&T Datacomm for information technology infrastructure for the new Main Library in order to meet Universal Service Administrative Company Grant Guidelines and compete for an E-Rate Award in the amount of \$595,578.72 with a local match of \$151,829.37.

Commissioner Ingram moved to approve the contract as recommended. Mayor Pro Tem Ramirez seconded the motion. The motion carried unanimously.

- C) Approval of License Agreement for a grease trap at 116 S. 17th Street.**

Staff recommended approval of a license agreement for a grease trap at 116 S. 17th Street.

Commissioner Barrera moved to approve the license agreement as recommended. Commissioner Ingram seconded the motion. The motion carried unanimously.

- D) Award of Contract - Airport HVAC System.**

Staff recommended award of contract for the Airport HVAC System to Schneider Electric, for an initial cost of \$333,961 plus a three-year system maintenance program in the amount of \$62,280, for a total of \$396,241.

Commissioner Crane moved to award the contract as recommended. Mayor Pro Tem Ramirez seconded the motion. The motion carried unanimously.

3. ORDINANCES:

- A) Approving the FY 2010-2012 Regional Consolidated Plan and Strategy and FY 2010-2011 CDBG/HOME Action Plan.**

Omar Quintanilla, Chair of the Community Development Council recommended adoption of an ordinance approving the FY 2010-2012 Regional Consolidated Plan and Strategy and FY 2010-2011 Action Plan for the Community Development Block Grant and HOME Investment Partnership (HOME) Programs.

Questions were asked relating to the funding criteria for CAMP University.

A lengthy discussion ensued relating to the program and federal requirements. After due consideration, Commissioner Darling moved to fund \$10,000 to Camp University from the General Fund. Commissioner Barrera seconded the motion. The vote on the motion was as follows:

AYE: Commissioners Darling, Barrera, and Mayor Pro Tem Ramirez
NAY: Commissioner Ingram, Crane, Mayor Pro Tem Salinas and Mayor Cortez
ABSENT: None
ABSTAIN: None

The motion failed to carry. A discussion was held.

Commissioner Barrera moved to adopt the ordinance with funding for Camp University in the amount of \$5,000 subject to decreasing the funding by \$2,500 for both the Boy's & Girl's Club and MYSA. Mayor Pro Tem Ramirez seconded the motion. The motion carried as follows:

AYE: Mayor Pro Tems Salinas & Ramirez, Commissioner Barrera and Mayor Cortez
NAY: Commissioners Darling, Ingram and Crane
ABSENT: None
ABSTAIN: None

B) Amending the McAllen Code of Ordinances, Chapter 114. Vehicles for Hire; to allow and regulate the operation of Pedicab Services.

Staff recommended adoption of an ordinance amending the McAllen Code of Ordinances, Chapter 114. Vehicles for Hire; to allow and regulate the operation of Pedicab Services as follows:

Permit fees: \$100.00 per operation plus \$50.00 per vehicle operated
Maximum number of permits: 10
Operating area: Two zones - the North Zone extends from Business 83 to Hackberry and the South Zone which extends from Business 83 to Fresno Avenue.
Hours of operation: 7:00 pm - 3:00 am
Fares: \$1.00 per person for service within a zone and \$2.00 per person for service from one zone to another.

Questions were asked relating to the proposed fees, hours of operation and zones. Staff reported that the cities surveyed reported gratuity-based operations.

Commissioner Barrera moved to adopt the ordinance as recommended. Commissioner Crane seconded the motion. The motion carried unanimously.

4. MANAGER'S REPORT:

A) Appointment to the McAllen Housing Authority Board of Commissioners by Mayor Cortez.

Mayor Cortez confirmed the reappointment of Yolanda Flores and Lorena Castillo to the McAllen Housing Authority Board of Commissioners.

Appointment by Mayor only; no motion required.

B) Seek direction on enforcement of side yard parking on residential lots.

Staff was instructed to begin the enforcement process pursuant to the discussion held in a workshop held earlier in the day.

C) Consider appointment of member to the McAllen-Hidalgo Bridge Board of Trustees.

A nomination was made by Mayor Cortez to appoint Jan Klinck as a member to the McAllen-Hidalgo Bridge Board of Trustees to replace Carlos I. Garza whose term has ended.

Commissioner Barrera moved to make the appointment as recommended. Mayor Pro Tem Salinas seconded the motion. The motion carried unanimously.

D) Seek direction on leasing fees for off-street parking spaces.

Staff requested direction on proposed leasing fees for off-street parking spaces of \$1,000 per year. It was noted that said meters still reflect \$0.05 per hour and are substantially lower than the existing meter rates of \$0.50 per hour. It was noted that new establishments will be looking at leasing meters as an alternative parking requirements of the Zoning Ordinance.

A discussion was held relating to a discount. Staff reported that the proposed fee already provided for a discount as the true cost would be approximately \$1,300 annually.

After due consideration, it was the consensus of the City Commission to instruct staff to conduct a market survey and proceed with the public hearing process before the Planning and Zoning Commission.

E) Future Agenda Items.

No items were mentioned.

5. PUBLIC HEARING BEGINNING AT 6:00 PM

Mayor Cortez called the Public Hearing to order.

- A) ROUTINE ITEMS: [All Rezoning and Conditional Use Permits listed under this section come with a favorable recommendation from the Planning & Zoning Commission and will be enacted by one motion. However, if there is opposition at the meeting or a discussion is desired, that item(s) will be removed from the Routine Items section of the agenda and will be considered separately.]**

Request of City of McAllen, for a Conditional Use Permit, for life of the use, for an institutional use (city elevated water tower) at 2.50 acres out of the north 26.69 acres of Lot 1, Block 17, Steel & Pershing Subdivision, Hidalgo County, Texas; 900 East El Rancho Road.

Staff recommended approval of the Conditional Use Permit, for life of the use, at 900 East El Rancho Road, as recommended Planning and Zoning Board and subject to FAA requirements. The proposed use must also comply with the Zoning Ordinance and specific requirements as follows:

- 1) The proposed use shall not generate traffic onto residential size streets or disrupt residential areas, and shall be as close as possible to a major arterial. The property has direct access to E. El Rancho Road;
- 2) The proposed use shall comply with the McAllen Off-Street Parking Ordinance and make provisions to prevent the use of street parking, especially in residential areas. A 25 ft. wide drive and paved parking area is proposed within the water tower site;
- 3) The proposed use shall prevent the unauthorized parking of its patrons on adjacent businesses or residences by providing fences, hedges or reorientation of entrances and exits
- 4) The proposed use shall provide sufficient lighting to eliminate dark areas, perimeter fencing, and an orientation of the building to provide maximum visibility from a public street in order to discourage vandalism and criminal activities;
- 5) Provisions shall be made to prevent litter from blowing onto adjacent streets and residential areas;
- 6) The number of persons within the building shall be restricted to the existing seating capacity for the building; and
- 7) Sides adjacent to commercially and residentially zoned or used properties shall be screened by a 6 ft. opaque fence. A 6 ft. opaque buffer is required from adjacent residential zones/uses to the east, west and south.

Mayor Cortez asked if there was anyone to speak in opposition. No one appeared.

Commissioner Barrera moved to approve the Conditional Use Permit as recommended. Commissioner Ingram seconded the motion. The motion carried unanimously by those present.

B) REZONINGS:

- 1) **Rezone from R-1 (single family residential) District to C-3 (general business) District: Lots 32 & 33, Linda Vista Subdivision, Hidalgo County, Texas; 2553 Lindberg Avenue.**

Staff recommended that said item be tabled.

Commissioner Ingram moved to table said item. Mayor Pro Tem Salinas seconded the motion. The motion carried unanimously by those present.

- 2) **Rezone from R-1 (single family residential) District to R-3C (multifamily residential condominium) District: 1.618 acres out of Lot 129, La Lomita Irrigation and Construction Company Subdivision, Hidalgo County, Texas; 2812 North Ware Road # A.**

The City Attorney disclosed that he had a conflict on said item and that he would abstain from providing legal advice on this matter. Further, he asked

that Assistant City Attorney Aaron Leal serve as legal counsel on this matter.

Staff recommended disapproval of the R-3C zoning as per Planning and Zoning Commission.

Mayor Cortez asked if there was anyone to speak in favor of the zoning request. Mr. Limas spoke in favor of the request. Mr. and Mrs. Jose Arredondo spoke in opposition.

Staff announced that the applicant requested that said item be tabled until a full Commission was present.

Commissioner Barrera moved to table said item. Mayor Pro Tem Salinas seconded the motion. The motion carried unanimously by those present.

C) CONDITIONAL USE PERMITS:

- 1) Request of Dora E. Portillo, appealing the decision of the Planning & Zoning Commission of the May 4, 2010 meeting, denying the request for a Conditional Use Permit, for one year, for a nightclub, at Lots 4 and 5 and the east 90 feet of Lot 6, Block 20, McAllen Addition Subdivision, Hidalgo County, Texas; 200 South Broadway Street, Suite A.**

Staff recommended disapproval of the Conditional Use Permit, for one year, at 200 South Broadway Street, Suite A, as per the Planning and Zoning Commission but with a favorable recommendation for a variance to the distance requirement. Moreover, if approved, the establishment would be required to meet the requirements of the Zoning Ordinance and specific requirements as follows:

- 1) The property line of the lot of any of the above-mentioned businesses must be at least 600 ft. from the nearest residence or residentially-zoned property, church, school, or publicly owned property, and must be designed to prevent disruption of the character of adjacent residential areas, and must not be heard from the residential area after 10:00 p.m. The establishment is within 600 ft. of a church and publicly-owned property;
- 2) The property must be as close as possible to a major arterial and shall not generate traffic onto residential-sized streets. The establishment has access to South Broadway Street and Beaumont Avenue and does not generate traffic into residential areas;
- 3) The business must provide parking in accordance with the McAllen Off-Street Parking Ordinance at a minimum, and make provisions to prevent the use of adjacent streets for parking;
- 4) The business must do everything possible to prevent the unauthorized parking of its patrons on adjacent properties;
- 5) The business shall provide sufficient lighting to eliminate dark areas and maximize visibility from a public street in order to discourage vandalism and criminal activities;
- 6) The business must make provisions to keep litter to a minimum and keep it from blowing onto adjacent properties; and
- 7) The above-mentioned business shall restrict the number of persons within the building to those allowed by the Planning and Zoning Commission at the time of permit issuance, after having taken into account the recommendations of the Fire Marshal, Building Official and Planning Director.

Mayor Cortez asked if there was anyone to appear in opposition to the Conditional Use Permit. No one appeared in opposition.

Commissioner Barrera moved to grant a variance and approve the Conditional Use Permit as recommended. Commissioner Ingram seconded the motion. The motion carried unanimously by those present.

- 2) Request of Sara A. Saenz, appealing the decision of the Planning & Zoning Commission of the May 4, 2010 meeting, denying the request for a Conditional Use Permit, for one year, for a nightclub at Lots 1 through 4, The District at McAllen Subdivision, Hidalgo County, Texas; 3300 North McColl Road, Suites P and Q.**

Staff recommended disapproval of the Conditional Use Permit, for one year, at 3300 North McColl Road, Suites P and Q, as per the Planning and Zoning Commission but with a favorable recommendation for a variance to the distance requirement including the extended hours of operation. Moreover, if approved, the establishment would be required to meet the requirements of the Zoning Ordinance and specific requirements as follows:

- 1) The property line of the lot of any of the above-mentioned businesses must be at least 600 ft. from the nearest residence or residentially-zoned property, church, school, or publicly-owned property, and must be designed to prevent disruption of the character of adjacent residential areas, and must not be heard from the residential area after 10:00 p.m. The proposed establishment is within 600 ft. of residential zones and uses;
- 2) The property must be as close as possible to a major arterial and shall not generate traffic onto residential-sized streets. The establishment has access to North McColl Road and Fern Avenue, and does not generate traffic onto residential areas;
- 3) The business must provide parking in accordance with the McAllen Off-Street Parking Ordinance at a minimum, and make provisions to prevent the use of adjacent streets for parking. Based on the square footage of the establishment, 68 parking spaces are required for this use and 264 additional spaces are required for the remainder of the buildings. There are 276 parking spaces provided in the common parking area in the front and rear of the building. This business was included in a request for a special exception on May 1, 2007 to reduce the required number of parking spaces, which was granted by the Zoning Board of Adjustments;
- 4) The business must do everything possible to prevent the unauthorized parking of its patrons on adjacent properties;
- 5) The business shall provide sufficient lighting to eliminate dark areas and maximize visibility from a public street in order to discourage vandalism and criminal activities;
- 6) The business must make provisions to keep litter to a minimum and keep it from blowing onto adjacent properties. Should this permit be granted, then the condition of keeping litter at a minimum on this property and on adjacent properties shall be maintained; and
- 7) The above-mentioned business shall restrict the number of persons within the building to those allowed by the Planning and Zoning Commission at the time of permit issuance, after having taken into account the recommendations of the Fire Marshal, Building Official and Planning Director. The maximum occupancy of the establishment was determined at the time of building permit for a total of 382 persons, of which 291 are allowed in the first floor and 91 persons in the second floor.

Mayor Cortez asked if there was anyone to appear in opposition to the Conditional Use Permit. No one appeared in opposition.

Commissioner Barrera moved to grant a variance and approve the Conditional Use Permit as recommended. Commissioner Ingram seconded the motion. The motion carried unanimously by those present.

D) Amending the Zoning Ordinance of the City of McAllen as enacted May 29, 1979.

No action required.

6. EXECUTIVE SESSION, CHAPTER 551, TEXAS GOVERNMENT CODE, SECTION 551.071 (CONSULTATION WITH ATTORNEY), SECTION 551.087 (ECONOMIC DEVELOPMENT) AND SECTION 551.072 (DELIBERATION REGARDING REAL PROPERTY).

On behalf of the Presiding Officer, the City Attorney recommended recessing into Executive Session pursuant to Chapter 551, Texas Government Code, Section 551.087 Economic Development for Items 6A and 6B; Section 551.071 Consultation with Attorney for Items 6G, 6H and 6I; and Section 551.072 Deliberation Regarding Real Property for Items 6C, 6D, 6E and 6F.

Mayor Pro Tem Salinas moved to accept the recommendation for the basis of the discussion in Executive Session under the sections cited by the City Attorney. Commissioner Crane seconded the motion. The motion carried unanimously.

Mayor Cortez recessed the meeting to go into Executive Session at 5:08 pm. Commissioner Darling and Mayor Pro Tem Ramirez excused themselves from the meeting at this time.

Mayor Cortez reconvened the meeting at 6:00 pm and addressed the Public Hearing followed by any action on Executive Session items.

A) Discussion and Possible Action relating to economic incentives for Project Leather Jacket. (Section 551.087, T.G.C.)

No action.

- B) Discussion and Possible Action relating to economic incentives for Project Big Box. (Section 551.087, T.G.C.)**

No action.

- C) Discussion and Possible Action to consider project extension for McAllen Skyline, Ltd. for Embassy Suites Hotel site sale. (Section 551.072, T.G.C.)**

Commissioner Barrera moved to authorize the City's Attorney's Office to grant a 90-day extension on the development project for Embassy Suites Hotel as discussed in Executive Session. Commissioner Ingram seconded the motion. The motion carried unanimously by those present.

- D) Discussion and Possible Action regarding property on Dove and Bicentennial. (Section 551.072, T.G.C.)**

Commissioner Ingram moved to authorize the City Attorney's Office to respectfully decline the offer to purchase the property. Mayor Pro Tem Salinas seconded the motion. The motion carried unanimously by those present.

- E) Discussion and Possible Action to consider the purchase of property on First Street across from Firemen's Park. (Section 551.072, T.G.C.)**

Commissioner Ingram moved to authorize the City Attorney's Office to respectfully decline the offer to purchase the property. Mayor Pro Tem Salinas seconded the motion. The motion carried unanimously by those present.

- F) Discussion and Possible Action to consider the purchase of property at 2nd and 10th Streets. (Section 551.072, T.G.C.)**

Commissioner Ingram moved to authorize the City Attorney's Office to respectfully decline the offer to purchase the property. Mayor Pro Tem Salinas seconded the motion. The motion carried unanimously by those present.

- G) Consultation with City Attorney regarding contractual and legal issues with HCWID #3. (Section 551.071, T.G.C.)**

No action.

- H) Consultation with City Attorney relating to Workers Comp/Loss Run Report as of April 30, 2010. (Section 551.071, T.G.C.)**

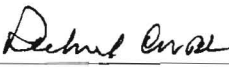
No action.

- I) Consultation with legal counsel regarding Police and Fire Collective Bargaining issues. (Section 551.071, T.G.C.)**

No action.

ADJOURNMENT:

There being no other business to come before the Commission, the meeting was adjourned at 6:30 pm.


Richard Cortez, Mayor

Attest:


Perla Zamora, TRMC
Deputy City Secretary

ATTACHMENT 3

RECEIVED MAY 26 2010



AT&T DATACOMM TERMS AND CONDITIONS OF EQUIPMENT AND SERVICES SALE

☒ There is no Equipment and/or Installation or Maintenance Services ordered at this time.

1. These terms and conditions ("Contract") govern the present or future sale and purchase of equipment and software set forth in attached Bill of Materials ("Equipment") and services and work described in Statement of Work ("Services") and any purchase order or change order that references this Agreement ("Orders") issued by the buyer indicated below ("Buyer" or "Customer") and accepted by AT&T DataComm ("AT&T" or "Seller"). The Contract is effective after execution by both. This Contract represents the entire agreement between Buyer and Seller and supersedes all prior agreements, both written and oral. In the event of a conflict between documents this Contract takes precedence. If, during the term of this Contract, Customer requests Equipment, installation and/or maintenance Service from AT&T, the terms and conditions set forth herein will apply to applicable attachments specific to the request that will be required. Examples of attachments would be: 1. Statements of Work (SOW); 2. Scope of Work (SCOW); 3. Project Implementation Guide (PIG); 4. Bill of Materials for Equipment and Services; 5. Invoicing Schedule and Payment Terms; 6. Implementation Timeline; and 7. Certificate of Acceptance

"AT&T DataComm, Inc. is a Delaware corporation; "AT&T DataComm" is an assumed name of AT&T DataComm, Inc., of Southwestern Bell Telephone Company in Missouri, Oklahoma, Arkansas, Kansas and Texas, and of Pacific Bell Telephone Company in California.

For the purpose of this Agreement, "Customer" includes any entity that controls, is controlled by or is under common control with Customer ("Customer Affiliate"). AT&T grants to Customer the right to permit Customer Affiliates to purchase Equipment and access and use the Equipment and Services, provided that Customer shall remain solely responsible for such purchase, access and use and for the Customer Affiliates' performance. This Attachment is for the procurement of purchased equipment ("Equipment") and equipment-related services ("Services") which includes manufacturer-provided maintenance for delivery in the United States. Manufacturer-provided maintenance may also be provided outside the United States depending on the manufacturer.

Maintenance Declined: Customer Initials: _____

2. Contract shall remain in effect for time period provided in the applicable Order(s), or as otherwise earlier terminated as provided herein. Either party may terminate this Contract/Order(s) upon 30 days written notice; except that if Customer cancels, Customer shall pay (i) a cancellation fee equal to 20% of the price of Equipment Order(s) cancelled; (ii) and 50% of the fees for Services for the remaining term (plus Seller's non-recoverable costs).
3. Payment terms are net 30 days from date of invoice. Equipment invoices are issued when Equipment is delivered to carrier. Service invoices are issued 30 days after rendered. Maintenance Service invoices are issued in full on date of contract. The purchase price is F.O.B. first point of shipment. We will deliver the Equipment FOB origin, prepaid and add. Title to the Equipment and all risk of loss to the Equipment shall pass to you at the time of delivery to the carrier for shipment. For those shipments where the purchase price of the Equipment is \$500K or greater, or where AT&T is performing staging services at an AT&T location, all risk of loss to the Equipment will remain with AT&T until delivery to you. Licensor retains title to any software provided with Equipment and grants Buyer a license for the software according to the software license agreement. If Equipment arrives damaged, Buyer will immediately notify the carrier and Seller in writing. Shipping date is estimated. Seller is not liable for any delays or damage in delivery or shipment. Late payment entitles Seller to collect a late fee of the lesser of 1.5% of the unpaid purchase price per month or the maximum amount allowed by applicable laws. Seller shall also be entitled, in addition to all other remedies available at law or in equity, to recover reasonable attorneys fees and/or other expenses in collecting the purchase price or otherwise enforcing or successfully defending itself in all matters relating to this Contract. Any tax or other governmental charge (a) upon the production, sale, shipment or use of the Equipment or (b) the provision of Services which Seller is required to pay or collect from Buyer shall be paid unless Buyer furnishes an exemption certificate acceptable to taxing authorities. Such amount is due whether or not included on the invoice.

Discontinuance by Supplier. If any Supplier of AT&T that supplies Equipment, Software and/or services, for resale to Customer pursuant to this Addendum, ceases to provide such Equipment, Software or services, for any reason whatsoever, either Party may terminate all or part of this Addendum upon ten (10) days written notice to the other Party, without any liability to the other Party, except for moneys owed to AT&T for Equipment delivered, software licensed, or services rendered to Customer or money owed to Customer for prepayment of any service.

4. If Seller installs, Buyer will furnish conduit, holes, wiring, plans, power, utilities and other items reasonably required for installation. Seller will rely on Buyer's information and is not responsible or liable for damages or costs resulting from errors or omissions in Buyer's information. Buyer will provide a suitable, safe environment. Buyer is responsible for required fees or permits and for identifying, handling and removing any potentially Hazardous Substances (means any substance classified as such by any law, regulation or ordinance) at Buyer's expense and for any additional costs incurred by Seller. Buyer agrees Seller does not handle, remove, dispose of or accept liability for Hazardous Substances. Seller has the right to suspend performance or pursue other remedies where Buyer delays or fails to comply with this provision. If these measures are unreasonably expensive, Buyer may request Seller suspend performance until an alternative remedy is agreed upon, provided Seller can terminate an Order, SOW or Contract if suspension lasts longer than 30 days.
5. Equipment ordered without installation is deemed accepted on the 10th business day after delivery to Buyer. Buyer may reject any portion of a shipment not conforming to manufacturer's specification within this period by written notice to Seller specifying reasons for nonconformity. Seller will cure nonconformity as per the Warranty. For Equipment ordered with installation, Buyer must notify Seller of nonconformity within 10 business days after installation completion. Services are deemed accepted on the 10th business day after completion unless Buyer notified Seller in writing within this period of nonconformity to specifications provided in the SOW. Absent written notice of nonconformity within applicable period, the Equipment or Services are deemed accepted. Seller may store a reasonable amount of Equipment and other items for the performance of an Order on Buyer's premises or in such other secure location(s) as Buyer may designate ("Storage Area"), at no charge. Buyer will take reasonable precautions to protect any such items, will accept delivery of any such items delivered to Buyer's facilities when Seller is not available to do so, ensure placement of such items in the Storage Area and notify Seller of such delivery.
6. Each party may obtain proprietary or confidential information including but not limited to trade secrets, new Equipment, technical data, know-how, manuals, and financial, marketing data or plans ("CI") from the other party. CI disclosed in writing, will be identified as confidential; when disclosed orally or visually, CI will be identified confidential at disclosure and confirmed in writing within 15 days thereafter. Neither party will disclose CI for 3 years after expiration of Contract without prior written consent of other party. Disclosure restrictions do not apply to information (a) already known to recipient, (b) publicly known through no wrongful act of recipient, (c) independently developed without benefit of CI, (d) received from a third party without similar restriction and without breach of Contract, (e) disclosed to a third party without obligation of confidentiality, or (f) required to be disclosed to a court or agency under order, however disclosing party has opportunity to obtain protective order or challenge disclosure.

AT&T AND CUSTOMER CONFIDENTIAL

This Agreement is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their companies.



AT&T DATACOMM TERMS AND CONDITIONS OF EQUIPMENT AND SERVICES SALE

7. Limited Equipment Warranty. (a) The Equipment will be provided to Customer on an 'As Is' basis. (i) AT&T DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED (INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE). (ii) AT&T WILL NOT HAVE ANY OBLIGATION OR BE LIABLE FOR ANY ERROR, OMISSION, DEFECT, DEFICIENCY, OR NONCONFORMITY IN ANY EQUIPMENT OR ANY OF THE SERVICES AT&T DOES NOT WARRANT THAT THE OPERATION OF EQUIPMENT WILL BE UNINTERRUPTED OR ERROR FREE. AT&T HAS NO WARRANTY OBLIGATION FOR EQUIPMENT THAT CUSTOMER ACQUIRES THROUGH AT&T AND EQUIPMENT THAT IS NOT MANUFACTURED BY AT&T AND THAT DOES NOT BEAR AN AT&T LOGO OR COPYRIGHT NOTICE. Customer, not AT&T, is responsible for selecting Equipment to achieve its intended results and for promptly verifying that the Equipment performs as specified by the manufacturer or licensor. (b) Manufacturer's Warranty. Notwithstanding the disclaimer set forth in the subsection (a) of this section, AT&T shall pass through to Customer any hardware warranties available from Equipment manufacturers and subsection (a) does not negate any software warranty that Customer may obtain directly from the licensor under the particular licensor's standard software license.
8. Workmanship Warranty. (a) The provisioning of AT&T Services and any deliverables under this Agreement shall be performed in a workmanlike manner that would meet commercial industry standards in the field to which the work pertains, as well as any standards set forth in attachments SOW. AT&T AND ITS AFFILIATES, SUBCONTRACTORS AND AGENTS SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND, EXCEPT FOR THE FIRST SENTENCE IN THIS SECTION AND AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO THE AT&T SERVICES. (b) Services: The AT&T Services, as described in the attachments which may include the SOW/SCOW, inventory schedule and payment terms, Bill of Material, Project Implementation Guide, Implementation Timeline or Certificate of Acceptance, are based upon, among other things, information provided by CUSTOMER. IN THIS REGARD, AT&T MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION PROVIDED TO AT&T BY CUSTOMER. CUSTOMER ACKNOWLEDGES AND AGREES THAT: (i) NONE OF THE INFORMATION FURNISHED BY CUSTOMER IN CONNECTION WITH AT&T SERVICES AND/OR DELIVERABLES HAS BEEN INDEPENDENTLY VERIFIED BY AT&T AND (ii) AT&T EXPRESSLY DISCLAIMS, AND WILL NOT BE SUBJECT TO, ANY LIABILITY WHICH MAY BE BASED ON SUCH INFORMATION, OR ANY ERRORS OR OMISSIONS IN SUCH INFORMATION, WHETHER OR NOT AT&T KNEW OR SHOULD HAVE KNOWN OF ANY SUCH ERRORS OR OMISSIONS, OR WAS RESPONSIBLE FOR OR PARTICIPATED IN THEIR INCLUSION IN OR OMISSION FROM THE SERVICES AND/OR DELIVERABLES. If AT&T does become aware of any errors or omissions in information are made or provided by Customer, AT&T will promptly notify Customer, in writing, of such errors and omissions. (c) Each party will perform their obligations under this Agreement in compliance with all applicable laws.
9. LIMITATIONS OF LIABILITY. AT&T SHALL NOT BE LIABLE TO CUSTOMER, TO THE CUSTOMERS OF CUSTOMER, OR ANY OTHER PARTY FOR THE LOSS, DAMAGE, OR INJURY WHICH RESULTS FROM THE USE OR APPLICATION BY CUSTOMER, CUSTOMER'S CUSTOMERS, OR ANY OTHER PARTY OF EQUIPMENT DELIVERED TO CUSTOMER, UNLESS THE LOSS OR DAMAGE RESULTS DIRECTLY FROM THE INTENTIONALLY TORTIOUS OR FRAUDULENT ACTS OR OMISSIONS OF AT&T. IN NO EVENT SHALL AT&T BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR LOSS, DAMAGE, OR INJURY OF ANY KIND OR NATURE ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, OR ANY AGREEMENT INTO WHICH THEY ARE INCORPORATED, OR ANY PERFORMANCE OR NONPERFORMANCE UNDER THESE TERMS AND CONDITIONS BY AT&T, ITS EMPLOYEES, AFFILIATES, AGENTS OR SUBCONTRACTORS, IN EXCESS OF THE NET PURCHASE PRICE OF THE EQUIPMENT ACTUALLY DELIVERED TO AND PAID FOR BY CUSTOMER UNDER THE ORDER THAT GAVE RISE TO THE LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF GOODWILL, LOSS OF ANTICIPATED PROFITS, OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR A PARTY'S PERFORMANCE THEREO, EVEN IF NOTIFICATION HAS BEEN GIVEN AS TO THE POSSIBILITY OF SUCH DAMAGES, EACH PARTY EXPRESSLY WAIVES ANY AND ALL CLAIMS FOR SUCH DAMAGES. CUSTOMER HEREBY EXPRESSLY WAIVES ANY AND ALL CLAIMS FOR SUCH DAMAGES.
- NOTHING IN THIS SECTION LIMITS CUSTOMER'S RESPONSIBILITY FOR THE PAYMENT OF CHARGES DUE AS PROVIDED IN THIS AGREEMENT.
10. AT&T SHALL HAVE NO DUTY TO DEFEND, INDEMNIFY, AND HOLD HARMLESS CUSTOMER FROM AND AGAINST ANY OR ALL DAMAGES AND COSTS INCURRED BY CUSTOMER ARISING FROM THE INFRINGEMENT OF PATENTS OR TRADEMARKS OR THE VIOLATION OF COPYRIGHTS BY EQUIPMENT. NOTWITHSTANDING ANY OTHER TERMS OR CONDITIONS TO THE CONTRARY, AT&T'S LIABILITY UNDER THIS SECTION SHALL NOT EXCEED THE PURCHASE PRICE OF THE INFRINGING EQUIPMENT.
11. This Agreement will be governed by the law of the State of New York, without regard to its conflict of law principles. The United Nations Convention on Contracts for international Sale of Goods will not apply. Any Contract modification requires a writing signed by both parties. Written notices shall be sent to billing address and are complete upon receipt. Payment obligations and Sections 6-9 inclusive survive termination. Any action for breach of the Contract or any covenant or warranty must be commenced within one year after the date the Equipment is delivered to Buyer, or one year after the date any Services are performed. Neither party shall assign the contract without written consent of other party, which consent will not be unreasonably withheld. However Seller may assign Contract to present or future affiliate or subcontract any portion of the Contract without Buyer's consent.
12. CISCO SOFTWARE LICENSE; WARRANTY; RMA PROCEDURES. (a) Software License. For Equipment manufactured by Cisco, the software is provided subject to the software license found at: http://www.att.com/cpe/docs/software_license.doc. This license is a separate agreement between Customer and Cisco. Customer's assent to the terms and conditions of this Agreement binds Customer to the terms and conditions of this Cisco license, as if the terms and conditions of the license were fully set forth in this Attachment. Customer agrees that it shall comply with the terms and conditions of this license and associated documentation. (b) Warranty. The applicable warranty passed through hereunder with respect to such Equipment manufactured by Cisco is included in the Equipment package. A sample of the Cisco limited warranty can be reviewed at: http://www.cisco.com/en/US/products/prod_warranties_listing.html. (c) RMA Procedures. The terms and conditions applicable to the Cisco RMA process can be reviewed at: http://www.att.com/cpe/docs/return_material_authorization.doc.
13. CISCO SMARTNET SERVICES. Cisco SMARTnet services provided in connection with Equipment are provided directly to Customer by Cisco pursuant to the terms of Cisco End User Support Agreement ("EUSA") which can be accessed by Customer at <http://www.cisco.com/legal/cbr.html>. The EUSA is a separate agreement between Cisco and the Customer. By Customer assenting to the terms and conditions of this Agreement,

AT&T AND CUSTOMER CONFIDENTIAL

This Agreement is for use by authorized employees of the parties hereto only and is not for general distribution within or outside their companies.



AT&T DATACOMM TERMS AND CONDITIONS OF EQUIPMENT AND SERVICES SALE

Customer is also bound to the terms and conditions of EUSA, as if the terms and conditions of the EUSA agreement were fully set forth in this Agreement. Customer agrees that it shall comply with the terms and conditions of the EUSA. AT&T will invoice Customer for the charges associated with such SMARTnet services. Cisco shall be solely responsible for the provision of the SMARTnet services and Customer releases AT&T from any loss, damages or other claims relating to the SMARTnet services.

Customer's Legal Business Name

This Agreement shall become effective when signed by authorized representatives of both parties.

CUSTOMER

By: [Signature]
(Authorized Agent or Representative)

Brent Branham
(Typed or Printed Name)

Deputy city Manager
(Title)

5-25-10
(Date)

AT&T

By: [Signature]
(Authorized Agent or Representative)

LARRY D. GIBSON
CONTRACT SPECIALIST - CUSTOMER CONTRACTS

(Typed or Printed Name)

(Title)

5/26/2010
(Date)

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